

from the differences between the sanction recommended by Complainant and the sanction imposed by the Chief ALJ, but rather from the Chief ALJ's lack of explanation for the differences.

Complainant did not appeal the Chief ALJ's failure to adopt the sanction recommended by Complainant. In light of the sanction recommended by Complainant in Complainant's Proposed Default Decision, the sanction imposed by the Chief ALJ in the Initial Decision and Order, and Complainant's failure to appeal the sanction imposed by the Chief ALJ, I impose a sanction which gives Respondents Steven Bourk and Carmella Bourk the benefit of the lower civil penalty recommended by Complainant and the shorter period of disqualification from obtaining an Animal Welfare Act license imposed by the Chief ALJ. I also do not order Respondents Steven Bourk and Carmella Bourk to cease and desist from violating the Standards because I do not find that either Respondent Steven Bourk or Respondent Carmella Bourk violated the Standards.

Sixth, Respondent Steven Bourk requests "legal counsel so this matter can be resolved in a timely manner" (Steven Bourk's Appeal Pet.).

The Administrative Procedure Act provides that a party in an agency proceeding may appear by or with counsel, as follows:

**§ 555. Ancillary matters**

....

(b) . . . A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.

5 U.S.C. § 555(b).

However, a respondent who desires assistance of counsel in an agency proceeding bears the responsibility of obtaining counsel. Moreover, a respondent who is unable to obtain counsel has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in disciplinary administrative proceedings, such as those conducted under the Animal Welfare Act.<sup>18</sup> Therefore, I reject Respondent

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<sup>18</sup>See generally *Elliott v. SEC*, 36 F.3d 86, 88 (11th Cir. 1994) (per curiam) (rejecting petitioner's assertion of prejudice due to his lack of representation in an administrative proceeding before the Securities and Exchange Commission and stating there is no statutory or constitutional right to counsel in disciplinary administrative proceedings before the Securities and Exchange Commission); *Henry v. INS*, 8 F.3d 426, 440 (7th Cir. 1993) (stating it is well-settled that deportation hearings are in the nature of civil proceedings and aliens, therefore, have no constitutional right to counsel under the Sixth Amendment); *Michelson v. INS*, 897 F.2d 465, 467 (10th Cir. 1990) (stating a deportation proceeding is civil in nature; thus no Sixth Amendment right to counsel exists); *Lozada v. INS*, 857 F.2d 10, 13 (1st Cir. 1988) (stating because deportation proceedings are deemed to be civil, rather than criminal, in nature, petitioners have no constitutional right to counsel under the Sixth Amendment); *Sartain v. SEC*, 601 F.2d 1366, 1375 (9th Cir. 1979) (per curiam) (stating 5 U.S.C. § 555(b) and due process assure

Steven Bourk's request to have counsel provided to him; however, I note that Respondent Steven Bourk is free to obtain counsel to assist him in this proceeding.

For the foregoing reasons, the following Order should be issued.

### ORDER

1. Respondents Steven Bourk and Carmella Bourk, their agents, employees, successors, and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and, in particular, shall cease and desist from operating as dealers as defined in the Animal Welfare Act and the Regulations without an Animal Welfare Act license.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondents Steven Bourk and Carmella Bourk.

2. Respondents Steven Bourk and Carmella Bourk are jointly and severally assessed a \$5,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Brian T. Hill

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petitioner the right to obtain independent counsel and have counsel represent him in a civil administrative proceeding before the Securities and Exchange Commission, but the Securities and Exchange Commission is not obliged to provide petitioner with counsel); *Feeney v. SEC*, 564 F.2d 260, 262 (8th Cir. 1977) (rejecting petitioners' argument that the Securities and Exchange Commission erred in not providing appointed counsel for them and stating, assuming petitioners are indigent, the Constitution, the statutes, and prior case law do not require appointment of counsel at public expense in administrative proceedings of the type brought by the Securities and Exchange Commission), *cert. denied*, 435 U.S. 969 (1978); *Nees v. SEC*, 414 F.2d 211, 221 (9th Cir. 1969) (stating petitioner has a right under 5 U.S.C. § 555(b) to employ counsel to represent him in an administrative proceeding, but the government is not obligated to provide him with counsel); *Boruski v. SEC*, 340 F.2d 991, 992 (2d Cir.) (stating in administrative proceedings for revocation of registration of a broker-dealer, expulsion from membership in the National Association of Securities Dealers, Inc., and denial of registration as an investment advisor, there is no requirement that counsel be appointed because the administrative proceedings are not criminal), *cert. denied*, 381 U.S. 943 (1965); *Alvarez v. Bowen*, 704 F. Supp. 49, 52 (S.D.N.Y. 1989) (stating the Secretary of Health and Human Services is not obligated to furnish a claimant with an attorney to represent the claimant in a social security disability proceeding); *In re Garland E. Samuel*, 57 Agric. Dec. 905, 911 (1998) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in disciplinary proceedings, such as those conducted under the Swine Health Protection Act); *In re Steven M. Samek*, 57 Agric. Dec. 185, 188 (1998) (Ruling Denying Motion to Appoint Public Defender as to Steven M. Samek) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in disciplinary proceedings, such as those conducted under the Animal Welfare Act); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439, 442 (1984) (stating a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented, is not a criminal proceeding and the respondent, even if he cannot afford counsel, has no constitutional right to have counsel provided by the government), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984).